IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 810 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIDDHRAJ MULJIBHAI SOLANKI

Versus

SUB DIVISIONAL MAGISTRATE JUNAGADH

Appearance:

MR PRAVIN GONDALIYA for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

Mr K G Sheth, APP for Respondent No. 2

UNSERVED-REFUSED (N) for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/10/2000

C A V JUDGEMENT

The petitioner has preferred this petition under Articles 226, 227, 14 and 21 of the Constitution of India for quashing and setting aside the externment order passed against the petitioner in Externment Case no.2/2000 by the Sub-Divisional Magistrate, Junagadh dated 24.4.2000 which was also confirmed in Appeal under section 60 of the Bombay Police Act, 1951 (for short, 'the Act') by the Deputy Secretary, Home Department, Government of Gujarat, Gandhinagar on 24.7.2000. The petitioner above named was externed out of the limits of the areas indicated in the order at Annexure 'B'. The petitioner preferred appeal under section 60 of the Act and there also he failed and therefore, this petition has been filed before this court. The petitioner has contended that the materials derived by the externing authority from the statement of witnesses not williing to disclose their names were not made known to him and hence he was unaware of such materials used against him beind his back. That the petitioner had examined witnesses before the externing authority but neither the externing authority nor the authority in appeal under section 60 of the Act considered their evidence and hence the orders suffer from non-application of mind. That, thereore, the order under section 56 of the Act passed against the petitioner is illegal and consequently, the order in appeal is also illegal. The petitioner has, therefore, prayed to quash and set aside the order.

2. On receipt of the petition, notice was issued at the first instance and thereafter, Rule was issued. Mr K G Sheth, learned APP appears for the State. I have heard the learned Advocates for the parties and have perused the papers.

3. The petitioner has come out with a case that the material derived from the witnesses who were not willing to disclose their names was not conveyed to the petitioner and the petitioner, therefore, was not aware about the said material and, therefore, those materials have been used by the externing authority against the petitioner behind the back of the petitioner.

4. Considering the notice and the order passed by the sub-Divisional Magistrate, Junagadh, as also the order passed in Appeal, it is very clear that the externing authority received some materials from the witnesses who were not willing to disclose their names. Those materials do not appear to have been conveyed to the petitioner in any manner whatsoever. The Externing Authority was at liberty to keep the names of those witnesses away from the knowledge and information of the

petitioner. But he could not keep away the material derived from those witnesses. Otherwise it would amount to infringement of principles of natural justice inasmuch as the material used by the externing authority was not conveyed to the petitioner and the petitioner was not aware about the said material. Another aspect of the case is that the petitioner had examined some witnesses before the Externing Authority. The Externing Authority does not appear to have considered as to what those witnesses have deposed and why the said depositions were not accepted by the said authority. Same is the case with respect to the order in appeal. There also, the argument was that certain witnesses were examined and their depositions were not considered by the Externing Authority. Even the appellate authority does not appear to have considered the said aspect of the case.

5. In that view of the matter, it is clear that on the one hand the material derived from the witnesses was not conveyed to the petitioner and on the other hand, the evidence of the witnesses produced by the petitioner has not been considered either by the externing authority or by the appellate authority. When the material was not disclosed to the petitioner and when his evidence has not been scrutinised or considered, then the order of externment passed by the said authority cannot be sustained.

6. In view of the aforesaid, it is clear that the orders passed by the said two authorities are illegal and deserve to be quashed and set aside. In the result, this petition is allowed. The impugned order passed by the sub-Divisional Magistrate dated 24.4.2000 in Externment Case No.2/2000 and confirmed in Appeal by order dated 24.7.2000 passed by Dy.Secretary, Home Department, Government of Gujarat, Gandhinagar is quashed and set aside. Rule is made absolute accordingly. D.S.permitted.

Date: 17.10.2000 [D P Buch, J.]
msp